IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 618.

THE UNITED STATES OF AMERICA EX RELATIONE ETHEL M. MCLENNAN, *Petitioner*,

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, *Respondent*.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the State of Wyoming, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

J. A. GREENWOOD,
Attorney General of the State of Wyoming.

Of Counsel:
PETER Q. NYCE.

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BRIEF OF THE ATTORNEY GENERAL OF WYOMING AS AMICUS CURIAE.

PRELIMINARY STATEMENT.

The State of Wyoming appears in this litigation because of its very great and vital interest in the development of its oil and gas resources and sets forth the following:

First: The State has received and is receiving from the Federal Government a very large, though diminishing, income under section 35 of the leasing act of February 25, 1920, section 35 thereof, providing as for our present purposes as follows:

"* * * 37½ per centum of the amounts derived from such bonuses, royalties and rentals shall be paid by the Secretary of the Treasury after the expiration of the fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct:" * * *

Second: That since the operation of such act began from 1920 to 1930, both inclusive the State has received as its 37½ per centum of the amounts derived from such bonuses, royalties and rentals, on account of oil and gas, under the provisions of said Act, the sum of $19,646,749.06.

Third: That provision was made by the Legislature of Wyoming for the disposition of the said 37½ per centum of the amounts so derived from such bonuses, royalties and rentals, under chapter 28, Session Laws of Wyoming of 1923, in substance as follows:

(a) 3 per centum to counties in which the oil was produced, to be expended by such counties in the construction and maintenance of permanent roads and highways;
(b) 3 per centum to be placed to the credit of the State Highway Commission and expended by it on permanent construction or maintenance in the county of the origin of the fund;
(c) 35 per centum to be placed to the credit of such Commission and expended by it on permanent construction or maintenance work, provided that there shall be expended in

each county of the State, its proportion of at least 75 per cent of such total amount so appropriated for its highway construction and the maintenance thereof; and the proportion so apportioned to each county, shall be determined:

(1) 50 per centum in the ratio that the assessed valuation of each county bears to the total assessed valuation of the State;
(2) 50 per centum in the ratio that the total mileage of state highways in each county, bears to the total mileage of state highways in the state

And not to exceed 15 per cent thereof shall be used by the Commission in engineering, supervising and other overhead expense;

(d) 50 per centum for teachers and school bus drivers;

(e) 9 per centum to the University of Wyoming;

Fourth: That there is no overproduction of oil in the Rocky Mountain States, as a ready market is found for all production in the area supplied; that the production therein is downward; and the amount of oil being produced is only about one-half that of six years ago; and the total production of the area, consisting of Colorado, Utah, Montana, New Mexico and Wyoming, is less than three per cent of the total production of the nation; and the present established refineries are running on only about one-half capacity; and the policy of shutting in production is followed whenever necessary;

That as an evidence of the fact that there is no

overproduction of oil in Wyoming, attention is invited to the following paragraph which appears in the Petition for leave to Intervene, recently filed by the Secretary of the Interior in the case of Public Service Commission of Wyoming, Complainant, vs. Chicago, Burlington & Quincy Railroad Company and Chicago & Northwestern Railroad Company, defendant, before the Interstate Commerce Commission.

> "III. That the lands which would be traversed by the proposed branch line and lands adjacent thereto to the west and south were formerly a part of the Shoshone or Wind River Indian Reservation. Part of the lands including those within the limits of the reclamation project, above described, were opened to disposition under the public land laws of the United States, the sale price per acre of the agricultural lands and the mineral receipts to be devoted or paid to the Indians. On these lands to the north and west of the town of Pavillion is located the Maverick Springs Oil Field, on which at the present time there are thirty-eight oil wells drilled but now shut-in, and not producing because of the lack of transportation facilities. It is estimated by this Department that from 2,000 acres of this field, 14,000,000 barrels of oil could be recovered in about ten years' time. That the Indians who are entitled to the profits derived from this oil have for a number of years been desirous of having wells opened up and oil produced therefrom, and the building of a branch line as prayed for, would lead to the development of this field and the marketing of oil to the benefit of the Indians."

While the Secretary of the Interior takes the position that Orders Nos. 337 and 338 are conservation measures in an effort to relieve overproduction of oil,

nevertheless he has in the case cited submitted as a reason for the construction of the Branch Railway involved the fact that as a result of such construction, fourteen million barrels of oil could be recovered in about ten years' time from the Maverick Springs Oil Field in this state.

Fifth: That there is no waste of oil in such area, as the supply is not more than sufficient to meet the demand; the Salt Creek field, in Wyoming, producing about one-half of the total production of said area, being an outstanding example of fields efficiently operated under methods providing real conservation; and other fields of said area largely follow such conservation system;

Sixth: That discoveries of the future, even under most liberal policies would only gradually increase the amount of production, and would probably not compensate for the rate of depletion of existing fields;

Seventh: That development of petroleum resources is a major industry in Wyoming, and the continued enforcement of the orders of the Secretary of the Interior, is resulting in a serious decrease in the commerce and industry of the state; and the revenues of the State under said leasing act;

Eighth: That the development of oil in State and privately owned lands is being seriously handicapped, as, without control of government lands, which usually surround such state and privately owned lands, operators could seldom afford to take the hazard of prospecting in lands of small acreage, as such prospecting is carried on at great cost; unless such operators and investors have justification therefor in the

control of large acreage, in order to warrant the necessarily large expenditures incurred.

Ninth: That under the well known rule of statutory interpretation, where the language of a law is in any manner ambiguous, or the meaning doubtful, resort may be had to the surrounding circumstances, the history of the times and the defect or mischief, which the statute was intended to remedy. We find with respect to the leasing act, and as a basis therefor, that for years the attempt to apply the oil placer mining laws to prospecting for oil and gas and to discoveries thereof, as a foundation for patent applications, was impracticable, owing to the enormous cost of drilling wells for oil and gas, leading to such discoveries, where such discoveries were not otherwise attainable; and the Department of the Interior and the Courts were besieged with controversies as to whether such a discovery had been made of oil or gas, as would justify a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a paying well; and that in order to settle the controversies, thus existing, as between the Federal Government and individuals; and as between individuals; but never to curtail the development of such lands; but on the contrary, to encourage development and to establish a more satisfactory method of disposal thereof by the Federal Government, and of acquiring thereof by prospectors; for the purpose of prospecting and development of such lands; the leasing act was passed; and such act was recognized as a partnership between the United States and the States and their operators and investors; and a resulting compromise between conflicting interests; and each party to the compact was benefited; and also the

States were granted a direct interest in the revenues from development (of which the State is now being deprived), in lieu of taxes that otherwise would have accrued to the states under the commercial production of oil and gas under the placer mining laws.

Tenth: That it is estimated by competent authority, there are within the State of Wyoming, 17,035,537 acres of lands in the public domain available for exploration under the said leasing act; and that this land, in recognized geological structures, would be prospected for oil and gas, if permitted under said Act.

Eleventh: That much of such prospecting and development would be done by operators engaged in such mining industry, and at their expense; which operators have demonstrated by their past and present practice in the industry in Wyoming, on public lands, where their permits are in force, and on other lands in the State; that expenditures for such purposes are justified by the markets for such oil and gas and the profits obtained both commercial and otherwise.

Twelfth: That legitimate prospecting and development of public lands in Wyoming for their oil and gas, require very extensive employment of labor in drilling wells and building roads; and, therefore, work for hundreds of men; and also the purchase of large quantities of oil well equipment and other merchandise necessary for such purposes; requiring the expenditure of very large sums of money; the drilling of some wells for oil, costing more than a hundred thousand dollars, and in some cases even as much as three hundred thousand dollars;

Thirteenth: That in reliance on the receipt of revenues under the provisions of said Act, and the inter-

pretation thereof, that it was intended to provide for continued prospecting and development of public lands for oil and gas in Wyoming, the State thereupon planned and is carrying forward a unified system of public highways, some of the main arteries of which are not only of state and local interest, but also of national importance and value as well (2) the State has also in dependence on such income; and through its State University, increased the efficiency and educational standards of that Institution; (3) and has also afforded its school children greater opportunities to secure an education by means of more numerous and more highly qualified teachers; and an assured transportation of such pupils from sparsely settled communities to centralized school buildings, where higher educational methods are attainable; and that material injury is being caused the State; and all of such public welfare activities are suffering by virtue of the said policy of the Secretary of the Interior;

Fourteenth: That accordingly, the growth, well-being, advancement, progress, welfare and prosperity of the State of Wyoming and its people, are, without lawful justification or authority, being seriously and adversely affected, as a result of the orders of the Secretary of the Interior in depriving the State and its citizens of the opportunity to develop such natural mineral resources, lying within its borders; and also of the revenues attendant thereon; and, therefore, of the power of the State to carry on its public welfare activities, as under the provisions of said leasing act it was intended it should do.

As a ground for the granting of writ of certiorari, as set out in Rule 38, paragraph 5 (c) of the Rules